

**JAN 04 2006**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MARK MATTOON, DBA Carson Valley  
Chiropractic,

Plaintiff - Appellant,

V.

FRANKIE SUE DEL PAPA; GEOFFREY  
KEOGG,

Defendants - Appellees.

No. 04-15651

D.C. No. CV-01-00636-DWH

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
David Warner Hagen, District Judge, Presiding

Argued and Submitted December 9, 2005  
San Francisco, California

Before: B. FLETCHER, HAWKINS, and BEA, Circuit Judges.

Dr. Mark Mattoon (“Mattoon”) appeals the district court’s grant of summary judgment based on qualified immunity to former Nevada Workers’ Compensation fraud investigator Geoffrey Keogh (“Keogh”).

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

A plaintiff alleging judicial deception by obtaining a warrant through false information “can only survive summary judgment on a defense claim of qualified immunity if the plaintiff can *both* establish a substantial showing of a deliberate falsehood or reckless disregard [for truth] and establish that, without the dishonestly included or omitted information, the magistrate would not have issued the warrant.” Hervey v. Estes, 65 F.3d 784, 789 (9th Cir. 1995).

Although Keogh may have been unprofessional and negligent in conducting the investigation, Mattoon’s claim does not meet the high standard of deliberate falsehood or reckless disregard for the truth.<sup>1</sup> In particular, there are plausible explanations for many of the serious inconsistencies between the statements attributed to witnesses in Keogh’s probable cause affidavit and the witnesses’ later deposition testimony.

Without a substantial showing of deliberate falsehood or reckless disregard for the truth, Keogh is entitled to qualified immunity, and the district court’s summary judgment grant is **AFFIRMED**.

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<sup>1</sup> We note, with approval, Nevada’s statement at argument that its enforcement agents now memorialize witness statements in writing or by audiotape.